**HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**FAMILY COURT APPEAL NO. 43 OF 2002.**

Anil Harischandra Pawar,
Age: 41 years, Occu: Service,
R/a: Pawar House,
Opp. St. Anthony's Church,
Mankhurd, Mumbai - 400 088. ..Appellant.

Versus.

Neelam Anil Pawar,
Age: 38 years, Occu: Housewife,
Hindu Indian Inhabitant,
Presently r/a Jari Mari Nagar,
Shivaji Colony,
Kalyan (E), Dist: Thane. ..Respondent.

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Mrs. Suvarna Telgote for the appellants.

Mr. A. G. Toraskar for the respondents.

**CORAM: S.B.MHASE &**
**S.R.SATHE JJ**

**DATE: JULY 11, 2005.**

**ORAL JUDGMENT (Per S.R.Sathe,J.):-**

1. The appellant - original respondent in Miscellaneous Application No.55 of 2001 has preferred this appeal against the judgement and order passed by the Family Court Judge at Bandra, whereby the application filed by the wife was allowed and maintenance granted to wife and son as Rs.600/- and Rs.400/- respectively was enhanced to Rs.1500/- and Rs.1000/- respectively (in all Rs.2,500/-) per month. It was an application under

section 25 of the Hindu Adoption and Maintenance Act, 1956 (For the sake of convenience, hereinafter referred to as "the said Act".)

2. The facts giving rise to this appeal are few and simple:

. The wife had filed an application for maintenance under sections 18 & 20 of the said Act in which both parties filed consent terms whereby they agreed that husband would pay maintenance of Rs.600/- p.m. to wife and Rs.400/- p.m. to son. The consent terms were entered into on 21st January 1997. It seems that as there was change in the circumstances, the wife filed application under section 25 of the said Act.

3. The only point is: whether there is material change in the circumstances as a result of which it is necessary to increase in the maintenance amount. Admittedly, at the time when the consent terms were drawn, the salary of the husband was Rs.8,000/- per month. Admittedly, thereafter when the second application was filed in the year 2002 after about 5 years from the initial order, there was increase in the salary of the husband. Besides this, there was also increase in the prices as also the total expenditure required for the maintenance of the wife and the minor son.

4. Both sides have not adduced any evidence, and relied upon the salary slip of the husband attached with the written statement. It is the contention of the husband that he is getting the salary of Rs.11,440/- per month and out of that, about Rs.8,645/- per month are deducted and there is no sufficient amount available for him to pay the enhanced maintenance. However, if we carefully peruse the salary slip, it appears that an amount of Rs.2,975/- has been deducted towards the Credit Society. Besides, there is another amount of Rs.2,000/- shown as deduction towards the Credit Society. Rs.1,318/- is shown as deduction towards the Provident Fund. The husband has not brought on record anything to show that for what purpose the loan was taken from the society and he is required to pay such huge instalments to the society. Probably, it may be with a view to show that he is getting less amount in hand thereby depriving the wife from getting enhancement in maintenance. Be that as it may, the husband was getting an amount of Rs.11,440/- per month in the year 2001 from the second salary slip, which is brought on record, it is clear that the present salary of the appellant - husband is Rs.13,715/-. It is needless to say that after the year 1997, there is rise in the prices and the cost of living has also gone high. Besides this, the son is also studying in 9th standard. So obviously there must be

some increase in the educational expenses of the son. Though it is tried to be contended on behalf of the husband that applicant - wife is having some source of income, the husband has not actually adduced any evidence in that behalf, as a result of the same the learned trial Judge has also only taken into consideration the salary received by the husband.

5. It is true that the other son of the parties is residing with the husband. Besides this, his mother and two unmarried sisters are dependent on him. It has also come on record that the opponent is residing in the house of his mother for which he is not required to spend anything. On the other hand, the wife is residing in a rented premises for which she has to spend some amount out of maintenance amount. Having regard to all these facts, the trial Judge has enhanced the maintenance amount per month from Rs.600/- to Rs.1,500/- for the wife and for the child from Rs.400/- to Rs.1,000/-. Taking into consideration the above mentioned material change in the circumstances, by no stretch of imagination it can be said that the quantum of maintenance fixed by the Family Judge is exorbitant. We do not find that there is any error in the order passed by the Family Court Judge.

6. The learned advocate for the appellant - husband tried to urge before this court that the

application filed by the wife was in fact not tenable and she ought to have filed a separate suit for enhancement. Not only that in order to substantiate the contention she relied on a ruling reported in **AIR-1965 CALCUTTA 228 (in the matter of Menokabala Dasi v/s. Panchanan Seal).** However, it is an admitted position that at the relevant time the Family Courts Act was not applicable. Moreover, the learned trial Judge has also considered this aspect and has correctly observed that as per the procedure, that has been laid down under the Family Courts Act, for fling the petition, the impugned application filed under section 25 of the said Act is rightly numbered as "Miscellaneous Application No. 55 of 2001". So , we are of the view that there was no substance in the contention raised by the learned counsel for the appellant-husband in this behalf.

7. In this view of the matter, there is no substance in the appeal. We do not intend to interfere with the order passed by the learned Family Court Judge.

Hence appeal is dismissed.

**(S.R.SATHE,J.)** **(S.B.MHASE, J.)**

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